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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

**CHAPTER 7 TRUSTEE'S REPLY
TO OBJECTION FILED BY MR.
ELLISON [ECF NO. 1021]**

Hearing Information

Date: **October 3, 2023**

Time: **2:00 p.m. (Pacific Time)**

Location: [Zoomgov.com](https://zoom.us/j/6692545252) or [\(669\) 254-5252](https://zoom.us/j/6692545252); Meeting ID: 1606922376

I. INTRODUCTION

Mr. Ellison wants to wind back the clock and use a pre-litigation device, a Rule 2004 exam, to see if his stale rumor, which he will not disclose, is worth anything in a case that he does not fully understand on behalf of a client that does not exist.

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1 Even if Mr. Ellison had standing – which he does not – he has not rebutted
2 the Trustee’s evidence that the settlement with Perkins¹ is fair and equitable. The
3 settlement will make the case administratively solvent. It will provide a
4 meaningful distribution to trade creditors. It will pave the way to closing the case
5 which is almost five years old.

6 Over the years, Mr. Ellison neither investigated nor shared his alleged
7 information with the Trustee despite his former role as counsel to the Official
8 Committee of Unsecured Creditors. Instead of conducting pre-litigation discovery
9 to substantiate this alleged rumor when the Committee existed, he used that power
10 to extract information from the Trustee about the estate’s case against Perkins
11 which Jun Dam, the former chair of the Committee, then used *against* the estate.
12 Even now, he refuses to share this information with the Trustee.

13 Now that the litigation is almost three years old, Mr. Ellison would like to
14 step in and tweak the settlement, squeeze some more money out of Perkins. He
15 proposes that he convey his five-year old rumor to the Court *in camera*, chat with
16 the mediator, and interview people at Perkins. He also proposes a short Rule 2004
17 exam. This plan is not based in reality. Rule 2004 exams are not used after
18 litigation has commenced. And Perkins is not going to allow a person with no
19 client to interview its people.

20 The Trustee asks that the Objection be overruled.

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22 ¹ Unless otherwise defined herein, capitalized terms have the meanings ascribed to
23 them in the [Chapter 7 Trustee’s Memorandum in Support of Motion for Order
Approving Settlements](#), ECF No. 1008.

II. POINTS AND AUTHORITIES

A. Mr. Ellison Lacks Standing and There Is No Role for Him

Mr. Ellison lacks standing. The Committee was dissolved when the case converted three years ago. [Order Converting Case to Chapter 7](#), dated September 30, 2020. ECF No. 744. (RJN No. 1.)² See *Schultze v. Chandler*, 765 F.3d 945, 947 (9th Cir. 2014), as amended (Aug. 1, 2014); [In re Freedlander, Inc. The Mortg. People](#), 103 B.R. 752, 758 (Bankr. E.D. Va. 1989) (“[C]onversion to Chapter 7, and the ensuing termination of the Chapter 11 Order For Relief, results in the dissolution of any committee appointed under 11 U.S.C. § 1102, and similarly prevents any award of attorney's fees to committee counsel for post-conversion services.”).

Mr. Ellison does not know if the more than four-year-old information is true or false. He never investigated it, despite being Committee counsel from January 2019 to September 2020, when the case converted and the Committee automatically dissolved. [Order Granting Unsecured Creditor Committee's Application to Employ DBS Law as Counsel Nunc Pro Tunc to January 11, 2019](#), filed January 24, 2019, ECF No. 145; [Order Approving Employment Under 11 U.S.C. § 1103 for Counsel for the Unsecured Creditors Committee](#), dated December 17, 2019, ECF No. 439. (RJN Nos. 2 and 3, respectively.)

² RJN refers to the *Request for Judicial Notice in Support of Chapter 7 Trustee's Reply to Objection Filed by Mr. Ellison [ECF 1021]*, filed herewith.

1 Mr. Ellison claims that in October 2020, he orally told the “Trustee and/or
2 counsel” that he has some information. [Objection](#), ECF No. 1021 at 2:10-12. But
3 somehow that information was not conveyed to the Trustee. Two and a half years
4 later, in April 2023, he reappeared sending an email asking if the litigation was
5 ongoing, and if so, asserting that he might have a useful line of questioning.
6 [Objection](#), ECF No. 1021 at 2:18-20. The litigation was not ongoing. The Trustee
7 was in settlement negotiations. *See* Minute Entry, dated April 25, 2023, Waldron
8 v. Perkins, Adv. Proc. No. 20-80031. ECF No. 168. (RJN No. 8.)

9 Now Mr. Ellison claims that the information is so important that it
10 undermines the settlement, but he will only share it with the Court *in camera*.
11 He would also like to talk with Judge Hursh and then interview Perkins’
12 witnesses. Meanwhile, he lacks a client.

13 **B. Perfect Form Is Not the Standard for Settlement Approval**

14 Mr. Ellison posits that he could do better than the Trustee. However, the test
15 for settlement approval is not “better,” “best” or “perfect” settlement. The
16 standard is whether the settlement is fair and equitable. Mr. Ellison’s belated
17 assertion of a valuable rumor does not rebut the evidence that the settlement is fair
18 and equitable. It will make the case administratively solvent. Among the
19 administrative claims are two landlords who worked with the Trustee and who
20 will now be paid. Unsecured trade creditors are expected to receive an above-
21 average distribution within the year instead of an uncertain distribution in years to
22

1 come. The settlement fully resolves three lawsuits and three appeals pending in
2 three courts. It pays the estate \$3 million and WTT token holders \$4.5 million.

3 To achieve this result, the Trustee obtained critical information from
4 multiple sources, including Wilson Sonsini Rosati & Goodrich, Circle Internet
5 Finance Ltd., Perkins Coie LLP, the Douglas County Public Utility District No. 1,
6 and Lighthouse Technologies, Ltd. He analyzed the documents in an e-discovery
7 database, run by LexBe. He put together a construction schedule and compared
8 that to the escrow releases. He interviewed a score of individuals, including the
9 landlords who were familiar with the construction of the facilities and the amount
10 of power they used. He ran the facilities giving him firsthand knowledge of their
11 revenue output and energy consumption, issues relevant to the claims against
12 Perkins. *See* Declaration of Mark D. Waldron Declaration, filed herewith.

13 The settlement is fair and equitable.

14 **C. The Limited Objection Is Contradictory**

15 Mr. Ellison asserts that he could verify the hearsay information in ten to
16 fourteen days, with only five questions in a Rule 2004 exam. However, he has
17 unearthed no answers *in more than four and a half years*. *See* [Objection](#), ECF No.
18 1021 at 2, n. 1 (“I came to learn of this information at the inception of the case . . .
19 .”). The case commenced on November 19, 2018.

20 Mr. Ellison’s proposed use of Rule 2004 would violate “[t]he well
21 recognized rule . . . that once an adversary proceeding or contested matter has
22 been commenced, discovery is made pursuant to the Fed.R.Bankr.P. 7026 *et seq.*,

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1 rather than by a Fed.R.Bankr.P. 2004 examination.” *In re Bennett Funding*
2 *Group, Inc.*, 203 B.R. 24 (Bankr. N.D.N.Y. 1996).

3 As Fed.R.Bankr.P. 2004 is meant to give the inquiring party
4 broad power to investigate the estate, it does not provide the
5 procedural safeguards offered by Fed.R.Bankr.P. 7026. For
6 example, under a Fed.R.Bankr.P. 2004 examination, a witness
has no general right to representation by counsel, and the right
to object to immaterial or improper questions is limited.

7 *Id.* at 28 (citations omitted). Perkins is unlikely to agree to a Rule 2004 exam,
8 which is “akin to a fishing expedition.” *See e.g., In re Subpoena Duces Tecum*,
9 461 B.R. 823, 829 (Bankr. C.D. Cal. 2011) (“The scope of a 2004 examination is
10 ‘unfettered and broad’ and is akin to a fishing expedition.”) (*quoting In re GHR*
11 *Energy Corp.*, 33 B.R. 451, 453–54 (Bankr. D. Mass. 1983)). Mr. Ellison’s
12 proposal is, therefore, a non-starter for this additional reason.

13 Mr. Ellison did not use his broad pre-litigation discovery powers as
14 Committee counsel to substantiate the information that he now claims is so
15 important. Instead, he used his discovery powers to extract information from the
16 Trustee about his case against Perkins which Jun Dam then tried to use *against* the
17 estate. *See e.g., Defendant’s Opposition to Trustee’s Motion for Injunctive Relief*,
18 dated December 9, 2021, filed in this Court in *Waldron v. Dam*, Case No. 2:21-ap-
19 80053, ECF No. 28 at 6:25-28, 7:1-12. (RJN No. 4). Cited excerpt attached hereto
20 as **Exhibit A**.

21 Mr. Ellison admits that he does not fully understand the Trustee’s case
22 against Perkins. He claims this is so because the Trustee’s complaint was

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redacted. [Objection](#), ECF No. 1021 at 4:2-5. However, the [Trustee's First Amended Complaint](#), filed November 23, 2022, *Waldron v. Perkins*, Adv. Proc. No. 20-80031, ECF No. 135, (RJN No. 7), was not redacted, and Mr. Dam filed an unredacted version of the original complaint after the District Court denied his motion to file it under seal. [Order Denying Appellant's Motion to Seal](#), *Dam v. Waldron*, dated June 8, 2022, U.S. District Court, E.D.W.A., Case No. 2:21-cv-00291-SAB, ECF No. 36, attached hereto as **Exhibit B**; [Appellant's Index](#), Vol. 1 of 2, AA235-266, *Dam v. Waldron*, U.S. District Court, E.D.W.A., Case No. 2:21-cv-00291, [ECF No. 38](#) at 240-271, excerpt attached hereto as **Exhibit C**. (RJN Nos. 5 and 6, respectively.) Therefore, there is no reason for Mr. Ellison's ignorance.

These contradictions undermine any semblance of credibility.

III. CONCLUSION

Mr. Ellison lacks standing. He also lacks sufficient understanding of the litigation to be allowed to submit *in camera* information to the Court, confer with the mediator, and ask Perkins to agree to sit for an exam that is akin to a fishing expedition.

The settlement is fair and equitable. It is the product of a thorough investigation of the facts and extensive litigation. It will allow the Trustee to turn his attention to claims resolution, distributions to creditors, and closing this five-year-old case.

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1 WHEREFORE, the Trustee respectfully asks the Court to overrule Mr.
2 Ellison's Objection and grant such other and further relief as the Court deems
3 necessary and just.

4 Dated: September 26, 2023

POTOMAC LAW GROUP PLLC

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6 By: /s/ Pamela M. Egan
Pamela M. Egan (WSB No. 54736)

7 *Attorneys for Mark D. Waldron, Chapter 7*
8 *Trustee*
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